

**IN THE CIRCUIT COURT OF GREENE COUNTY,  
STATE OF MISSOURI**

**PETITION FOR PRELIMINARY, PERMANENT, AND MANDATORY  
INJUNCTIONS, RESTITUTION, CIVIL PENALTIES AND OTHER  
COURT ORDERS**

## **PARTIES**

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo 2010.<sup>1</sup>

2. Defendant K B Motorsports, Inc. (“K B Motorsports”) is a Missouri corporation that transacts business in Greene County, Missouri. Its principal place of business is 511 South Ingram, Springfield, Missouri 65802.

3. Defendant Branden Grimm (“Grimm”) is the owner of K B Motorsports, Inc. and resides at 511 South Ingram, Springfield, Missouri 65802.

4. Any acts, practices, methods, uses, solicitations or conduct of the Defendants alleged in this Petition include the acts, practices, methods, uses, solicitations or conduct of Defendants and Defendants’ employees, agents, or other representatives acting under Defendants’ direction, control, or authority.

5. Defendants have done business within the State of Missouri by marketing, advertising, offering for sale, and selling automobiles to persons

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<sup>1</sup> All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* “(Supp. 2012)” —the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

within the State of Missouri.

### **JURISDICTION**

6. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

7. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

8. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020.

### **VENUE**

9. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

10. Defendants marketed, advertised, offered, and sold automobiles in Greene County, Missouri, and have engaged in the acts, practices, methods, uses, solicitation and conduct described below that violate

§ 407.020, RSMo in Greene County, Missouri.

**MERCHANDISING PRACTICES ACT**

11. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

12. "Person" is defined as "any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof." § 407.010(5).

13. "Merchandise" is defined as "any objects, wares, goods, commodities, intangibles, real estate, or services." § 407.010(4).

14. "Trade" or "commerce" is defined as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any

property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

15. Defendants have advertised, marketed, and sold merchandise in trade or commerce within the meaning of § 407.010.

16. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in Sections 407.010 to 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

### **SALE AND TRANSFER OF VEHICLES**

17. Section 301.210 of the Missouri Revised Statutes provides in pertinent part:

1. In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued, the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the director of revenue, with a statement of all liens or encumbrances on such motor vehicle or trailer, and deliver the same to the

buyer at the time of the delivery to him of such motor vehicle or trailer...

### **ALLEGATIONS OF FACTS RELEVANT TO ALL COUNTS**

18. From at least October 2012, Defendant Branden Grimm owned and operated K B Motorsports as an automobile dealership that marketed, advertised, offered to sell and sold automobiles to Missouri consumers.

19. Defendants contracted with Carbucks and Next Gear Capital, floor planner financing companies ("Floor Planners") that sold financing services to automobile dealerships.

20. Floor Planners loaned the Defendants money to purchase automobiles in return for a security interest in the vehicles.

21. Floor Planners kept physical possession of certificates of title of the automobiles in Defendants' inventory.

22. Floor Planners withheld transfer of titles from Defendants in order to assure repayment on Defendants' loan.

23. When Defendants sold an automobile to a consumer, Defendants were required to pay Floor Planners before Floor Planners would release the title to Defendants.

24. Despite knowing that they did not possess the titles, Defendants sold vehicles and promised consumers that they would provide titles to the vehicle after sale or transfer.

25. Defendants failed to transfer title at the time of sale or transfer.

### Consumer Examples

26. Defendants sold automobiles to the following consumers and did not deliver titles at the time of sale, transfer, or at any point thereafter:

- a. Brenda Williams, who contracted with Defendants on or about October 3, 2012, purchased a 2008 Dodge Charger with an extended warranty for \$1,760.00;
- b. Evan Van Ostray, who contracted with Defendants on or about July 1, 2013, purchased a 2004 BMW for \$7,839.00;
- c. Ashley Nyberg-Johnson, contracted with Defendants for two vehicles;
- d. Mary Crim, who contracted with Defendants on or about July 29, 2013, purchased two vehicles for a total of \$30,000;
- e. Aaron Moser, who contracted with Defendants on or about July 17, 2013, purchased a vehicle for \$6,500.00;
- f. Gerald Jolley, who contracted with Defendants on or about June 25, 2013, purchased a vehicle for \$20,500.00.

- g. Robert McGuire, who contracted with Defendants on or about May 6, 2013, purchased a vehicle for \$20,158.00.
- h. Lucia Krone, who contracted with Defendants on or about May 24, 2013, purchased a 2011 Mazda 3 for \$14,150.00.
- i. Edward Hartsog, who contracted with Defendants on or about June 23, 2013, purchased a 2004 King Ranch F350 for \$13,500.00
- j. Nina Coffey, who contracted with Defendants on or about April 17, 2013, purchased a truck for \$21,000.00.
- k. Steven Garrett, who contracted with Defendants on or about August 21, 2013, purchased a vehicle for \$13,974.00.
- l. Davalin Giles, who contracted with Defendants on or about June 12, 2013, purchased a truck for \$17,000.00.
- m. Jonathon Payne, who contracted with Defendants on or about July 28, 2013, purchased a vehicle for \$2,500.00.

### **VIOLATIONS OF LAW**

#### **COUNT I: FALSE PROMISE**

- 27. Plaintiff incorporates all allegations stated above.
- 28. Defendants violated Section 407.020 by falsely promising consumers that Defendants would provide the vehicle's title to the consumer,



a statement which was false or misleading as to Defendants' intention or ability to perform the promise, or likelihood the promise will be performed.

## **COUNT II: DECEPTION**

29. Plaintiff incorporates all allegations stated above.

30. Defendants violated Section 407.020 by using deception in that Defendants engaged in acts or practices which had the tendency or capacity to mislead, deceive, or cheat and tended to create the false impression that Defendants had the ability to transfer the certificates of title for the vehicles being sold and delivered to consumers when in fact Defendants did not physically possess the certificates of title.

## **COUNT III: CONCEALMENT, SUPPRESSION, OR OMISSION OF A MATERIAL FACT**

31. Plaintiff incorporates all allegations stated above.

32. Defendants violated Section 407.020 by concealing, suppressing or omitting the material fact that Defendants did not physically possess the certificates of title to be able to transfer them to consumers at the time of delivery.

## **COUNT IV: UNFAIR PRACTICE**

33. Plaintiff incorporates all allegations stated above.

34. Defendants violated Section 407.020 by engaging in the method, use or practice of selling and delivering automobiles to consumers without passing or transferring title which violates § 301.210, RSMo, a statute intended to protect the public.

35. Defendants' violation presents the risk of, and causes substantial injury to consumers because violations of § 301.210 harmed, and will continue to harm, consumers.

### **RELIEF**

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that the Defendants violated the provisions of Section 407.020.

B. Issuing Preliminary and Permanent Injunctions issued pursuant to §§ 407.100.1 and 407.100.2 prohibiting and enjoining the Defendants and its agents, servants, employees, representatives and other individuals acting at its direction or on its behalf from selling automobiles in the State of Missouri.

C. Issuing Preliminary and Permanent Injunctions that require the Defendants and their agents, servants, employees, representatives and other individuals acting at their direction or on their behalf to transfer titles on vehicles purchased by consumers to any and all consumers who purchased

vehicles prior to the filing of this action and have not received properly executed title.

D. Requiring the Defendants pursuant to § 407.100.4 to provide full restitution to all consumers who suffered any ascertainable loss, including but not limited to any monies or property acquired by Defendant through unlawful practices.

E. Requiring the Defendants pursuant to § 407.100.6 to pay the State of Missouri a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

F. Requiring the Defendants pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against the Defendant, or such other amount as the Court deems fair and equitable.

G. Requiring the Defendants pursuant to § 407.130 to pay all court, investigative and prosecution costs of this case.

H. Granting any further relief that this Court deems proper in the premise.

Respectfully submitted,

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/s/ Melissa Cullmann

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